

Govindappa Vs. Premanand

Govindappa Vs. Premanand

SooperKanoon Citation : sooperkanoon.com/382674

Court : Karnataka

Decided On : Mar-08-1985

Reported in : ILR1985KAR2214

Judge : Kulkarni, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 95

Appeal No. : C.R.P. No. 181 of 1981

Appellant : Govindappa

Respondent : Premanand

Advocate for Def. : M. Rama Bhat, Adv.

Advocate for Pet/Ap. : R.G. Hegde, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Kulkarni, J.

1. This is a plaintiff's revision against the Judgment and decree dated 30-9-1980 passed by the Civil Judge, Sirsi in R.A. 45 of 1978, reversing the Judgment and decree dated 28-7-1978 passed by the Munsiff, Haliyal, in O.S. 192 of 1975

decreeing the suit.

2. The plaintiff filed the suit alleging that he had purchased the suit property in a Court auction sale held in Execution Case 63 of 1953 for Rs. 775/- and a sale certificate was issued in respect of the suit property on 25-10-1972. The suit property is in possession of the defendant and that the defendant refused to deliver possession of the same. The plaintiff filed Kirkol Misc. No. 4 of 1974 for obtaining possession of the property. The defendant resisted the same on the ground of limitation. The plaintiff's petition was dismissed on the ground that it was barred by time. Hence, the plaintiff filed the suit for recovery of possession.

3. The defendant resisted the suit.

4. The Munsiff decreed the suit. The defendant approached the Civil Judge with an appeal. The Civil Judge set aside the judgment passed by the Munsiff and dismissed the suit. Hence, the revision by the plaintiff.

5. The fact that the plaintiff purchased the property in a Court auction and that the sale certificate was issued to the plaintiff on 25-10-1972, are not in dispute. It is also not in dispute that the plaintiff filed a K. Mis. Case 4. of 1974 under Order 21 rule 95 of the Code of Civil Procedure for obtaining possession of the property. That was dismissed on the ground that it was barred by limitation.

6. The Trial Court held that the dismissal of Miscellaneous Case 4 of 1974 did not operate as resjudicata and did not bar the suit. However, the Civil Judge was of the opinion that the dismissal of Miscellaneous Case operated as res judicata and barred the suit. The Learned Author Sri Mulla in his Code of Civil Procedure, 13th Edition, page 1206 has stated, as:

'It may be observed that a purchaser at a Court sale is not bound to apply for possession under this rule. He may at his option bring a regular suit for possession, the period of limitation for the suit being 12 years as stated above. The remedies by way of application and that by way of suit are concurrent. But in the case of a decree holder purchaser, his only remedy is under this rule even if there is a claim for mesne profits. Further, the fact that an application has been

made under this rule, and it is rejected as beingtime barred, or on any other ground is no bar to a regular suit for possession. The words 'any person' in the concluding portion of the rule have reference to the persons mentioned earlier in the rule, the judgment-debtor or any person in possession on his behalf or claiming under him. It has no application to trespassers, and accordingly proceedings to reject them must be, not in execution, but in a suit.'

Admittedly the plaintiff is not a decree - holder auction-purchaser. Therefore, his remedy is either by way of filing an application under Order 21 Rule 95 of the Code of Civil Procedure or by a separate suit or by resorting to both. Therefore, the view of the lower Appellate Court that the present suit was barred on account of the dismissal of the Miscellaneous Case, is not correct.

7. Therefore, under these circumstances, the Judgment and decree passed by the lower Appellate Court are set aside. The revision is allowed. The Judgment and decree passed by the Munsiff, decreeing the suit, are restored.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com